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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

NO. 88-345

THE STATE OF FLORIDA,

Petitioner,

vs.

OLIVER WENDALL BELCHER,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

BRIEF OF RESPONDENT IN OPPOSITION

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BRIEF OF RESPONDENT IN OPPOSITION

The respondent, Oliver Wendall Belcher, files this brief in opposition to the petition for writ of certiorari filed by the State of Florida in this cause.

COUNTERSTATEMENT OF THE CASE AND FACTS

Respondent's counterstatement of the case and facts will be limited to a recitation of pertinent aspects of the proceedings below which are omitted from the statement of the case in the state's petition.

On February 2, 1985, the respondent Belcher was arrested for a double homicide and transported to an interview room at the Metro Dade homicide office in Miami. A Detective Conley began to interrogate Belcher at 1:55 a.m. Detective Conley read Belcher his Miranda rights; Belcher indicated he understood his rights and was willing to speak without an attorney being present. Belcher then gave the detective certain information regarding the

crime. Detective Conley interviewed Belcher until approximately 4:50 a.m.

At 4:50 a.m., Belcher told Detective Conley, "I don't want to talk to you any more." Detective Conley stopped questioning Belcher and left him alone in the interview room. Shortly thereafter, Detective Conley telephoned Detective Blocker, another detective working on the case. Conley told Blocker that Belcher was under arrest for the crimes but that Belcher did not want to talk to him anymore. Conley told Blocker he had not been able to get Belcher to confess and asked Blocker to respond to attempt to talk to Belcher to get a statement implicating him in the crime.

Detective Blocker arrived at the homicide office about 6:00 a.m. and Conley showed him the original rights waiver form signed by Belcher. Conley further advised him that Belcher had waived his rights and had not requested an attorney, but that Belcher no longer wanted to talk to him. Detective Blocker entered the interview room, introduced himself to Belcher and told him he worked in homicide and "wanted to talk to him about the investigation which was going on." He told Belcher about the differences between first and second degree murder. Detective Blocker also told Belcher there was "an abundance of evidence" against him and that he wanted to hear Belcher's "side of the story" and further, that what Belcher told him "may weigh heavily as to what charges would be filed against him." Belcher told the detective he wanted "to think about it" and "would like to be left alone." The detective left Belcher alone for five minutes, then returned to the room and said to Belcher, "Do you want to talk to me?" Belcher replied, "Just get your pad and pencil." Detective Blocker got a pad and sat down with Belcher and Belcher confessed to the crime. Blocker did not reread Belcher his rights during either interview prior to taking this oral confession. A stenographer then arrived and Detective Blocker read Belcher his rights and took a formal written statement from him.

Detective Blocker further stated in court that it was his

"impression" that when Belcher stated to Conley he no longer wanted to talk to him, Belcher did not intend for that statement to apply to all police officers, only to Conley. Detective Blocker admitted, however, that he made no attempt to clarify the statement. He further felt that if Belcher really did not want to talk to him, Belcher would have reasserted his right not to talk.

REASONS FOR DENYING THE WRIT

> THE DECISION OF THE DISTRICT COURT OF APPEAL OF FLORIDA CORRECTLY AFFIRMED THE TRIAL COURT'S GRANTING OF BELCHER'S MOTION TO SUPPRESS HIS CONFESSION WHERE THE CONFESSION WAS OBTAINED AFTER AN UNCONSTITUTIONAL RE-INTERROGATION AFTER BELCHER INVOKED HIS RIGHT TO REMAIN SILENT, AND WHERE NO THRESHHOLD QUESTIONS WERE ASKED OF BELCHER AS TO WHETHER HE WISHED TO CONSENT TO A REQUESTIONING.

In its petition, the State of Florida has phrased the question to this Court as follows:

> If a suspect in a criminal case a) has been advised of his rights under Miranda, b) answers some questions put to him and then c) expresses his desire to cut off questioning, do the police fail to "scrupulously honor" his Fifth Amendment rights by later asking him threshhold questions directed solely to whether or not he would consent to any further questioning without first readvising him pursuant to Miranda?

The issue as thus phrased by the state concerns whether a defendant, who exercised his right to cut off questioning, must be readvised of his Miranda warnings when the police merely ask him threshhold questions as to whether he wished to consent to any further questioning.

This issue, however, is simply not the issue in this case. This was not the issue in the trial court, it was not the issue in the Florida District Court of Appeal, and it is not the issue before this Court. This is so because the undisputed facts of this case establish the police did not intend to and did not in fact ask Belcher any threshhold questions as to whether he wished to consent to any further questioning. Instead, the facts show that the police specifically did not ask any such threshhold questions because they did not think they were necessary. The police felt they were free to continue interrogating Belcher about the crime after he told one officer he no longer wanted to talk so long as they changed the police officer conducting the interrogation. Moreover, they thought it was up to Belcher to sua sponte re-assert his right to silence upon requestioning by the different officer.

A review of the record demonstrates this lack of factual basis for the state's petition for writ of certiori. The record

establishes that Belcher was arrested and transported to an interview room at the Metro Dade homicide office in Miami at 1:55 a.m. on February 2, 1985, where he was interrogated by Detective Conley. Detective Conley read Belcher his Miranda rights and Belcher stated he understood his rights and was willing to speak to the detective without an attorney being present. Belcher then gave the detective certain information during an interview that was not claimed to have been coercive or the product of unconstitutional police action.

However, at 4:50 a.m., Belcher told Detective Conley, "I don't want to talk to you anymore." It is undisputed that Detective Conley stopped questioning Belcher and left the interview room. However, Detective Conley immediately placed a telephone call to another detective on the case, Detective Blocker, and asked him to come down to the station to speak to Belcher. Detective Blocker admitted in court that Detective Conley had informed him he had not been able "to get" Belcher to confess to the homicide and Detective Blocker further admitted that Conley asked him to come to the station for the express purpose of speaking with Belcher to get him to give a statement implicating himself in the crime.

Detective Blocker arrived at the homicide office about 6:00 a.m. and Conley showed him the original rights waiver form signed by Belcher. Detective Blocker testified Conley further advised him Belcher had waived his rights and had not requested an attorney, but that Belcher no longer wanted to talk to him. According to Detective Blocker, it was his "impression" that Belcher did not intend for that statement to apply to all police officers, only to Conley. Detective Blocker admitted, however, that he made no attempt to clarify the statement. Moreover, he felt that if Belcher really did not want to talk to him, Belcher would have reasserted his right not to talk.

Meanwhile, Belcher was still sitting in the interrogation room where Conley had left him. Detective Blocker entered the room, introduced himself to Belcher and told him he "wanted to talk to him about the investigation which was going on." He told

Belcher about the differences between first and second degree murder. He also told Belcher there was "an abundance of evidence" against him for which he would be charged and that what charges would be filed depended on what Belcher told them, and further told Belcher he "wanted to hear his side of the story."[1] Belcher told Detective Blocker he "wanted to think about it" and "would like to be left alone." Detective Blocker, however, merely stepped outside the interview room for five minutes before returning and asking Belcher, "Do you want to talk to me?" It was at this point Belcher replied, "Just get your pad and pencil" and confessed to the crime. It is undisputed that Detective Blocker did not re-advise Belcher of his Miranda rights on either occasion.[2]

Thus, it can be seen from the foregoing there is no issue regarding "threshhold questions directed solely to whether or not he would consent to any further questioning." (State's petition, pg. i) The state's own witness admitted he made no effort to clarify Belcher's statement because it was his "impression" Belcher's statement did not apply to him and he thought it was up to Belcher to sua sponte re-assert his right to silence upon requestioning.

Moreover, it is clear that Detective Blocker's questions to Belcher were not in any way "directed solely to whether or not he would consent to any further questioning" as claimed by the state. Detective Blocker entered the interrogation room a mere hour after Belcher had unequivocally asserted his right to silence and immediately told Belcher he "wanted to talk to him about the investigation which was going on." He described the difference between first and second degree murder. He told Belcher there was "an abundance of evidence" against him in this case for which he would be charged and that he wanted to hear

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1 The undisputed facts of this case are in direct contrast with the state's claim in its petition that Detective Blocker "merely inquired if respondent would agree to resume questioning." (State's petition, pg. 10)

2 Detective Blocker did not re-advise Belcher of his Miranda rights until after Belcher confessed. At that time, Detective Blocker called in a stenographer, reread Belcher his rights, then took a formal statement from him.

Belcher's "side of the story," and further, that what charges were filed would depend on what Belcher told him. It strains understanding to suggest, as the state has, that these questions by Detective Blocker were mere "threshhold questions" seeking to inquire into Belcher's "desire to renew questioning" and that what Blocker did "was merely prefatory to questioning." (State's petition, pg. 7, 13)

In deciding this case, the district court of appeal found that Belcher's right to cut off questioning was not "scrupulously honored" under Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975). The appellate court found that Detective Blocker's requestioning Belcher about the same crime following Belcher's invocation of his right to silence coupled with the passage of a mere hour between interviews and Blocker's failure to give Belcher fresh Miranda warnings supported the trial court's ruling that Belcher's right to cut off questioning was not scrupulously honored. Thus, contrary to the state's claim in its petition, the appellate court did not require that Detective Blocker re-advise Belcher of his Miranda rights prior to talking with him. The appellate court found the lack of fresh Miranda warnings was only one factor to consider in determining that Belcher's right to cut off questioning was not scrupulously honored.

'Consequently, the Florida court has not "misinterpreted Miranda and Mosley to require a re-advising by Detective Blocker prior to his inquiring into respondent's desire to renew questioning." (State's petition, pg. 13) The court's decision is in full accord with the principles set forth by this Court in Miranda and Mosley. In Miranda v. Arizona, 384 U.S. 436, 474, 86 S.Ct. 1602, 1628, 16 L.Ed.2d 694 (1966), this Court established that one of the important procedural safeguards protecting the constitutional rights of persons subject to custodial interrogation is the "right to cut off questioning." In order "to assure that the exercise of the right will be scrupulously honored," Id., 384 U.S. at 478-479, Miranda requires the police to immediately terminate their interrogation of an accused once

the accused "indicates in any manner, at any time prior to or during questioning" that he wishes to remain silent and not speak to the police anymore. In Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46 L.Ed.2d 313 (1975), this Court reaffirmed the Miranda requirement and found the key inquiry was whether the right to cut off questioning was "scrupulously honored." Id., 423 U.S. at 103-104. The determination of whether a suspect's right to cut off questioning was scrupulously honored and whether the resumption of questioning was permissible depends upon the circumstances of each case in light of several factors, including whether the police immediately ceased the interrogation upon the defendant's request, whether they resumed questioning only after the passage of a significant period of time, whether they provided fresh Miranda warnings, and whether they restricted later interrogation to a crime that had not been the subject of the first interrogation for which the right to silence had been asserted. See Michigan v. Mosley, id.; Jackson v. Wyrick, 730 F.2d 1177, 1179 (8th Cir. 1984); United States v. Udey, 748 F.2d 1231, 1241 (8th Cir. 1984); United States v. Hernandez, 574 F.2d 1362, 1369 (5th Cir. 1978); United States v. Finch, 557 F.2d 1234, 1236 (8th Cir. 1977).

The record here demonstrates Belcher was confronted with requestioning in direct contravention of the principles and spirit of Miranda and Mosley. When Detective Conley's interview proved unsuccessful, Belcher was kept in continuous custody and exposed to two additional attempts to get him to confess to the same crime a mere hour after he invoked his right to remain silent, all without fresh Miranda warnings or waiver of rights and with no "threshhold questions" designed to clarify any perceived ambiguity. Such circumstances required the suppression of his confession, see Spradley v. State, 442 So.2d 1039 (Fla. 2d DCA 1983); United States v. Hernandez, 574 F.2d 1362 (5th Cir. 1978); United States v. Olof, 527 F.2d 752 (9th Cir. 1975); Shaffer v. Clusen, 518 F.Supp. 963, 965 (E.D. Wisc. 1981); United States v. Morris, 491 F. Supp. 226, 229 (S.D. Ga. 1980); United States v. Clayton, 407 F.Supp. 204 (E.D. Wisc. 1976), and

the Florida appellate court properly affirmed the trial court's suppression of the statements.[3] Such ruling by the court below does not present any ground for this Court's granting a writ of certiorari.

CONCLUSION

Based upon the foregoing, the respondent respectfully requests this Court to deny the state's petition for writ of certiorari.

Respectfully submitted,

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[3] The district court of appeal further stated that a trial court's ruling on a motion to suppress has a presumption of correctness and, where the record supports the trial court's ruling, as it did here, the appellate court may not substitute its judgment for that of the fact-finder.

The principle that a trial court's ruling on a motion to suppress comes to a reviewing court with the same presumption of correctness that attaches to jury verdicts and final judgments, and that a reviewing court should defer to the factfinding authority of the trial court, is firmly embedded in Florida jurisprudence. See Wasko v. State, 505 So.2d 1314 (Fla. 1987); DeConingh v. State, 433 So.2d 501 (Fla. 1983), cert. denied, 465 U.S. 1005, 104 S.Ct. 995, 79 L.Ed.2d 228 (1984); Stone v. State, 378 So.2d 765 (Fla. 1979), cert. denied, 449 U.S. 986, 101 S.Ct. 407, 66 L.Ed.2d 228 (1984). Of course, a prerequisite to the application of a presumption of correctness under Florida law is the presence in the record of substantial, competent evidence supporting the decision of the trial court under the correct analysis. The foregoing examination of the facts of this case demonstrates that the appellate court below properly determined that substantial, competent evidence supported the trial court's finding, under the principles established by this Court, that Belcher's right to cut off questioning was not scrupulously honored.